

Exhibit 1 to Plaintiff's Response To Defendant's Motion for Summary Judgment

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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HAZEL ROBY, as Administratrix
of the Estate of RONALD TYRONE
ROBY, Deceased,

Plaintiff,

VS.

BENTON EXPRESS, INC., et al.,

Defendants.

* * * * *

The testimony of ALBERT GARLIN McLELLAN,
taken at Bozeman, Jenkins & Matthews, 114
East Gregory Street, Pensacola,
Florida, on the 5th day of October, 2005,
commencing at approximately 11:15, o'clock,
a.m.

ORIGINAL

CIVIL ACTION NUMBER
2:05CV494-B

1 MR. BOONE:

2 Q Okay. Sir, have you ever received any
3 written document or training in safety meetings from
4 Benton Express concerning what to do if you get tired
5 on the road?

6 A I can't remember getting anything like
7 that.

8 Q Have you received any written
9 instructions or any communications in safety meetings
10 on what to do if you get sick on the road while
11 driving?

12 A I have never received any.

13 Q Have you received any written material or
14 training in your safety meetings concerning what to
15 do if you're going to be delayed on the truck for,
16 say, over four hours?

17 A Yes, I have. I have to call in.

18 Q Okay. Let's talk about that. Sir, have
19 you ever received any written document or anything
20 telling you how frequently you should be in contact
21 with Benton Express when carrying or when picking up
22 or dropping off a load?

23 A Road drivers only call in in case of an

1 from beginning to end?

2 A Oh, probably six months ago.

3 Q Okay. Well, I know you don't have it in
4 front of me (sic), but I'm going to read something to
5 you and ask you if you recall it saying that. Do you
6 recall if that document said on page -- and I know
7 you won't remember the page number, but I'm going to
8 read it for the record. 084 Bates number. That the
9 scope of this policy, it says: The following
10 security guidelines and procedures apply to all
11 work/load assignments.

12 Do you ever recall reading that?

13 A Yes.

14 Q And further on page 3, which is Bates
15 number 086, do you ever recall reading this here:
16 Drivers are expected to maintain regular
17 communication with the company while in transit?

18 A Yes, I remember reading that.

19 Q And as a line-haul driver, have you ever
20 -- as a line-haul driver, do you maintain regular
21 communication with the company while in transit?

22 A No, I do not.

23 Q Any reason why you don't?

1 A We're not -- line-haul drivers are not
2 required to do that. The city drivers are.

3 Q Anything you recall reading that says
4 that, that it does not apply to line-haul drivers?

5 A No, I can't remember.

6 Q Well, let me ask you this. Do you
7 remember, as you -- whether you can point it to me
8 since it's not in front of you, but -- and your
9 attorney, the attorney there, may have a copy, but if
10 he doesn't, what I'm trying to figure out, do you
11 remember if there is anything specifically in there
12 that says regular communication does not apply --
13 this regular communication paragraph I read does not
14 apply to line-haul drivers?

15 A I can't -- no, I don't.

16 Q Did anybody tell you it doesn't apply to
17 line-haul drivers?

18 A I can't remember anyone telling me that.

19 Q Also, in this document, it says that --
20 well, let me ask you this here. The truck that you
21 drive every day, is it the same one?

22 A Yes.

23 Q Does city drivers drive your tractor or

1 is it only yours?

2 A A city driver drives it during the day.

3 Q Okay. And you drive it during the night?

4 A I drive it during the night.

5 Q Okay. Do you -- do you have -- is there
6 any equipment in your truck or technology that's in
7 your truck that would enable drivers and dispatchers
8 to communicate with each other during business hours?

9 A No.

10 Q As a line-haul driver, are you issued a
11 Benton Express paid for cell phone or Nextel two-way
12 radio?

13 A No. I have my personal.

14 Q Okay. Benton Express does not -- did not
15 provide you with any communication device for
16 communicating with them when you're on the road?

17 A No. I have my own personal phone.

18 Q No. Let me ask you. Okay? I'm trying
19 to make sure I get one at a time. I'm going to ask
20 you that question next. But make sure I get it clear
21 for the record.

22 Did Benton Express offer you any type of
23 device to communicate with them when you're on the

1 it that day.

2 Q Okay. Had you ever done it before?

3 A Yes.

4 Q Did you know that -- were you aware that
5 Craig Stephens, on Friday, left Benton Express after
6 being assigned a load by Craig Stephens to take to
7 Atlanta?

8 MR. BROCKWELL: Hey, Labarron, you
9 just said if he was aware that Craig
10 Stephens, I think, had been assigned a load
11 by Craig Stephens. I think maybe you meant
12 somebody else's name in there.

13 MR. BOONE: Yeah, you're right.

14 MR. BOONE:

15 Q Sir, were you aware that Craig had a run
16 to Atlanta to haul a Benton Express load on Friday,
17 which I think would be, 4/8 of '05?

18 A Yes.

19 Q And did you have any runs on Friday?

20 A No.

21 Q Did you ever run -- do any runs on
22 Friday?

23 A Yes.

1 Q And where would you normally go when you
2 did a run on Friday?

3 A Atlanta.

4 Q And so, you had did that run that Craig
5 had done before?

6 A Say that again.

7 Q You had did that run from Pensacola to
8 Atlanta and Atlanta and back to Pensacola before?

9 A Yes.

10 Q And I would think -- would it be fair to
11 say you had did it a bunch of times?

12 A Yes.

13 Q And do you recall about the first time
14 you ever did it?

15 A To Atlanta?

16 Q Yeah. It may have been since the
17 beginning. I don't know. But I'm just asking.

18 A Maybe eight, nine, ten years ago.

19 Q Okay. And how often would you make a
20 Friday run?

21 A Every Friday.

22 Q On the Friday that Craig went to Atlanta,
23 you did make one that Friday?

1 A No, I did not.

2 Q Any reason why you didn't make one that
3 Friday?

4 A I took off that night.

5 Q You just took off?

6 A That's correct.

7 Q Is it any Fridays where both you and
8 Craig make runs?

9 And I'm sorry, I may have not heard you.
10 You may have already answered, but I'm not sure. And
11 my question was, are there any Fridays where you and
12 Craig both make runs to Atlanta?

13 A No.

14 Q So, either one of you all go to Atlanta
15 or the other one don't?

16 A The Atlanta run is my regular run.

17 Q Okay. Any -- and Craig would do it
18 whenever you took off?

19 A Right, whenever I wanted off and he was
20 available and had the time to do it, he did it.

21 Q Okay. Now, when Craig left on that
22 Friday for -- to do the run, your regular run, did
23 you have any contact with Craig on Friday or

1 A Yes.

2 Q Nothing had changed about -- to your
3 knowledge, about Craig that would have made him not a
4 good Benton Express employee?

5 MR. BROCKWELL: You're talking about
6 prior to the phone call or during the phone
7 call or after the phone call?

8 MR. BOONE: Yeah. Let me ask the
9 question. Let me just go ahead and go
10 forward.

11 MR. BOONE:

12 Q So, at -- at 5:00 or five minutes to 5:00
13 when you talked to Craig, where -- did Craig call you
14 on your personal cell phone?

15 A Right. He called me on the walkie-talkie
16 or direct connect or whatever you want to call it.

17 Q On your cell phone?

18 A That's correct.

19 Q Which would have been at that PIN number
20 186 asterisk 112 asterisk 19311?

21 A Yes.

22 Q And at that time, when your friend Craig
23 called you, what did he tell you?

1 A He wanted to know if I could run the
2 Tallahassee run, which was his regular run.

3 Q Okay.

4 A And that's what he asked me.

5 Q And what did you tell him?

6 A I told him yes, I was backing under the
7 trailer right then.

8 Q Okay. And so, on that Sunday, at 5:00,
9 you were about to do Craig's Tallahassee run?

10 A Yes.

11 Q All right. Anything else you and Craig
12 talked about?

13 A During that conversation?

14 Q Yeah, during that conversation.

15 A Yes. I asked him where he was at. And
16 he said he was still hung up in Atlanta.

17 Q All right. So, at your -- when you
18 talked to him at 5:00 on Sunday, he told you he was
19 still in Atlanta?

20 A Yes.

21 Q And did y'all talk -- did y'all talk
22 about anything else other than the fact he told you
23 he was still in Atlanta?